

*Rec. in p drive 4/7/22 rg

Wayne Chin
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354 Hunter Street
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April 3, 2022

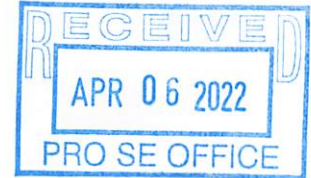
Allyne R. Ross
United States District Judge
United States Courthouse
Eastern District of New York

Chin v. Noeth
19-CV-02729 (ARR)

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ APR 06 2022 ★

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Addendum to Petitioner's Reply to
Respondent's Opposition to Rule 60(b) Motion

Your Honor,

PLEASE TAKE NOTICE; that Petitioner, Wayne Chin, submits this addendum in support of his previously submitted Reply to further highlight two deficiencies in Respondent's arguments in opposition to Petitioner's Rule 60(b) motion.

1. Respondent's failure to include the N.Y.C.P.L. § 330.30 state court's proceeding in their affidavit dated March 24, 2022, was no slight omission, but an intentional act to distance themselves from their admission that defense counsel, Phillip Smallman, Esq., informed the trial court that he was instructed to advance an affirmative alibi defense at trial. (See, Marie John-Drigo, Esq., (ADA)'s affidavit @ page 4).

2. Respondent and this Court's contentions that; "defendant failed to present any facts that support an alibi defense and therefore, trial counsel's failure to present such defense did not interfere with petitioner's right to decide the objectives of his own defense," (Resp.'s Memo., dated 3/24/22, @ page 4) is misplaced.

3. First, it must be noted that it was the respondent who opposed a hearing in the CPL § 440.10 state court proceeding, and this Court whom declined to hold such a hearing where the facts of petitioner's alibi could be probed and facts established on the record.

4. Last, but not least, no court, federal or state, has every held that in a violation of an accused's Sixth Amendment-secured autonomy case, the accused is required to establish the validity of a particular defense, before the violation is complete. McCoy v. Louisiana, 138 S.Ct. 1511, is controlling, and as the petitioner rightfully pointed out in his Rule 60(b) motion, and the respondent could not argue otherwise: "Most of these case draw primarily from Faretta's emphasis on the personal character of the Sixth Amendment right to make a defense, which never focused on the nature of the defense the defendant sought to assert, ..." See, Petitioner's Rule 60(b) motion @ page 8.

Wherefore, Petitioner's Rule 60(b) motion should be granted in all respect since the respondent's failed to present or argued any point of law in opposition to the petitioner's legal arguments. Petitioner's prays summary judgment of habeas corpus relief, conditionally releasing the petitioner from state's custody, or alternatively, reopening the habeas proceeding, invites pro bono representation, and reinstate the petitioner's bail motion, and any further relief that impartial justice deems just and proper.

Respectfully submitted,



Wayne Chin

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Petitioner: Pro Se

Sing Sing Corr. Fac.

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TO SERVICE:

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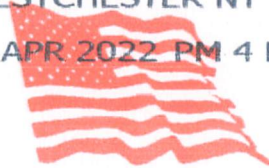
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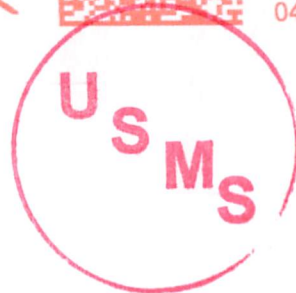
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